IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5543 of 2007()

CRIME NO.491/2007 OF CHENGANNUR POLICE STATION

: PETITIONER/2ND ACCUSED

SRI.NIKHIL @ NIKHIL MELVIL THOMAS,
AGED 19 YEARS, KANNAMTHANATHU HOUSE,
THITTAMEL, CHENGANNUR (NOW RESIDING AT
PANIKEREDATHU HOUSE, KEEZHCHERIMEL,
CHENGANNUR).

BY ADV. SRI.S.HARIKRISHNAN

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
CHENGANNUR.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5543 of 2007

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail. The petitioner is the 2nd accused. He faces allegations for offences punishable, inter alia, under Section 308 r/w 149 I.P.C. The crux of the allegations against the petitioner is that he along with about 12 others (3 accused persons are named and other 10 are not named) had gone to the house of the defacto complainant. They had allegedly gone there consequent to an incident which had taken place in the previous day in which the car driven by the 1st accused had hit against the motorcycle in which the defacto complainant was travelling. It is alleged that the defacto complainant was called out of his house and was attacked. A granite stone was used by the principal accused to inflict a serious injury on the head of the victim. The petitioner allegedly shared the common intention and also slapped the victim on his face with his hand. The alleged incident took place on 28.08.07 at about 9.30 p.m. F.I.R has been registered. The petitioner is named in the F.I.R. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is a young man in his late teens. He had no animosity against the defacto complainant. He had allegedly gone to the house of the defacto complainant only in an attempt to mediate and settle

the dispute between the defacto complainant and the other accused. He is not responsible for the incident which had taken place later. At any rate, he did not share the common intention with the principal accused who inflicted the injury by using the granite stone. The petitioner may, in these circumstances, be granted anticipatory bail, submits the learned counsel for the petitioner.

3. The learned counsel for the petitioner submits that the petitioner is a student of the Bachelor of Computer Application Degree course. His exams are going on now. He has to appear for the examination till 24.09.07. At any rate, he may be permitted to write his examination in peace without the threat of arrest and detention, submits the learned counsel for the petitioner.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that all the relevant inputs reveal that the petitioner was only one of the miscreants who went to the house of the de facto complainant. The theory that the petitioner was only a mediator has no legs to stand on, submits the learned Public Prosecutor . At any rate, this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked. The petitioner may be directed to surrender before the learned Magistrate and then seek regular bail like some other co-accused who have already entered appearance and have by now been enlarged on bail. The learned Public Prosecutor fairly

submits that the prosecution has no objection against this Court issuing appropriate direction to facilitate the completion of the examination of the petitioner.

5. I have considered all the relevant inputs. I am satisfied that on merits, there are no circumstances or features in this case which justify or warrant invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I am satisfied that this is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

6. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

7. I take note of and accept the undertaking of the learned Public Prosecutor that the petitioner shall not be arrested before 25.09.07 to facilitate his appearance at the examination.

(R.BASANT, JUDGE)

rtr/-